A PROJECT FOR Advancing CREDIT,

By Preventing and Diſpatching

Tedious Law-Suits;

Humbly preſented to the LORDS of SESSION, and with their Allowance, Recommended to the Conſideration of Others. K Sinclair, Lord.

Hope Delayed, makes the Heart Sick.

Luk. 18. 4, 5. *Though I fear not God, nor regard Man, yet becauſe this Widow troubleth me, I will avenge her, leſt by her continual coming ſhe weary me.*

Non minus eſt Injuſtitia, Differre quod Juſtum eſt, quam Negare: Qui negat, ſolicitudine liberat; qui differt æque non dat, & Curas perpetuat.

EDINBURGH,

Printed by JOHN MONCUR at the Foot of the *Bull*-Cloſs, Overagainſt the Trone Church, 1709.

BRITISH MUSEUM

THE CRY OF THE Many Diſtreſſed Creditors on Bankrupt Eſtates, ADDRESSED, TO The Right Honourable, The Lords of Council and Seſſion;

My Lords of Council and Seſſion,

IT is very Obvious, to the moſt overly On-Lookers, and in a ſpecial manner muſt be known to your Lordſhips, through whoſe hands theſe Matters paſs; That within theſe Fourty Years, near a Fourth part of the Eſtates in the Kingdom have changed Maſters, through the failing and becoming Bankrupt, of the former Proprietars, and ſome of them have fallen into bad Circumſtances, more than once or tiwce, within that time.

It is alſo but too Obvious, that when Gentlemen break, What, with leading Adjudications (of which we have ſeen Threeſcore againſt a ſmall Eſtate) and Expences of Infeftments, Charges, Proceſſes of Mails and Dutys, Poindings of the Ground, Inhibitions, Arreſtments, Furthcomings, *&c.* and Competitions on the ſame: for the moſt part, one Third part of the value of the Eſtate is Squandered at Law, and in Perſonal Attendance, before the Eſtate be Sequeſtrat, and the Ranking begin: And yet all that went before, is but like the beginning of Sorrows to the Hell, of ſcarce ever ending Vexations, and Expences we ly under, during the long Dependance of Tedious Compt and Reckonings, Rankings and Sales, which go near to conſume another Third of the Subject of our Payments.

Beſide, that if the Sequeſtration have continued or ſhould continue but a dozen of Years. Whereas moſt of us have felt the heavy burden already much longer, without any proſpect of being nearer a period; The other Third part of theſe Eſtates is Sunk and Embazled with Factor-Fees, Expences of their frequent Proceſſes for Exoneration, their vaſt Allowances for waſte Land, their Under-ſets through Fraud or Sloath, Neglect of Policy, with which they cannot meddle, and a Hundred ſuch things, that make the Rents turn to very ſmall account: Beſide, that if it were not evident of it ſelf, it might be demonſtrated, that a Land Eſtate, in the Management of the beſt Maſters, all ſort of Deductions allowed, ſeldom gives above 4 or 4 and a half in the 100 of the Price, for which it was bought or may be ſold; and that much ſeldomer is it ſeen, that an Eſtate under Factors, yeilds Two Thirds of what it uſed to do, when in a Proprietars hand, or would do again, if come into better Management, which things joined will but too ſadly clear, that a Sequeſtrate Eſtate yields not near the half of the Annualrent of the Price it might be ſold at, which in a Dozen of Years will be Six or Seven Years purchaſe, that compleats the laſt woful Third of

our

our Debitors Means, and after many years vexation and disappointed Hopes of getting some what of our own, we at last go Home, with our Trouble for our pains, Poorer than if we had burnt our Debitors Bonds at first, or gifted them for nothing.

Thus far we have presented your Lordships with a small sketch of our Utter Calamity, so far as it only regards our selves. But (*My Lords,*) you may view it in another form, as it affects the Common Wealth, and whole Body of the Nation. Your *L*ordships know that the Prosperity of a Kingdom, consists in the well Imployed Wealth of a numerous People, and yet our Ruin prejudges all Three. Your Lordships know that a dead *S*tock is no *S*tock, Treasures hid in the Ground, are no better than if sunk in the Sea: And full worse is Money on an Incumbered Estate, which cannot be got out of it again, without Twenty Years Labour, not much better than digging in a Mine: The Bankrupt *D*ebitor gets no advantage by the Estate, because it's not our, the Right of it is carryed away from him; We the Creditors get no advantage by it, because of the uncertainty, when we shall get any thing of it, its useless to us all, because of the doubt whose it shall be, as if it had no Master, as if it were in *Terra Incognita*, where humane Foot never Trode: it affords us no Credit to Trade with, no means to subsist us or our Familys, no Man will lend any of us a Thousand *Merks*, though we had securitys for Twenty: But every one, on too good Grounds stands a loof from our sore, and says, he has a Plea, I will have nothing to do with him; his Money is on such an Estate, It's ten to one, if ever his Children see any of it; no body will meddle to help us: some Ruiks indeed of the Inferiour People about the Parliament House, taking advantage of our *S*traits, at times will give a small thing for preferable Rights, but then its on design to Maul the rest of us, who have not so timeous Securities, utterly to Exclude us, or force our Rights from us for little better than nothing, very fair, if they allow us the Expence we

have

have been at, in seeking our own. Thus our Credit is Ruined, and our Fortunes made useless for Trade, or any sort of Improvement; for it should be needless, to tell your Lordships, that without Credit there is no Trade nor Improvment, no Merchant pays all with ready Money, no Merchant nor Tradesman sells all for ready Money; and it were impossible he should, else he cannot Trade for the Quarter of his Stock, and the rest must ly dormant in his hand, fruitless to him while he waits on Bargains, and fruitless to all the World.

Thus Your Lordships see, how much our Miseries hamper the Improvement of our Stock, and Ruine our Credit which naturally Impoverisheth us, and has brought many of us, as much to a bit of Bread, as if we had thrown it away on Whoreing and Ryot; This disables us from Trading and Maintaining Families on the Product of our Stocks, this discourages such of us as are Unmarried from Marrying, this incapacitats the Married among us from Breeding and Feeding our Children, forces them into Foreign Countrys for Bread, or turns them and us to be Burdens to others, and every way diminishes the number of Profitable Members of the Common Wealth, which by our Losses, suffers in its Numbers, its Wealth, and the Improvement of both.

And if your Lordships Reflect on the vast number of Incumbered Estates, which we believe may for Ordinary be a Tenth part of the Kingdom, you cannot but see that the Country suffers inexpressibly by this stop of Credit, and Mortifying of Stock.

My Lords, The General Intereſt of the Nation in clearing the Circulation of Credit, and consequently Trade from such an heavy Embargo, as well as your Natural Inclination and Duty of relieving the Oppressed, sufficiently Recommend our Prayers to your Serious Consideration: And we have at all times been *Sen*sible of your Good Designs towards ending Processes; especially these Vexatious and endless Labyrinths

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in which we are Loſt: And particularly, we are Senſible of your Fatherly Care in ſome late Regulations relating to our Caſes, by diſcharging Factors to buy in Debts, and reſolving to puſh all Parties to Endeavour Diſpatch, by refuſing to allow any Body a Sixpence till the End, and ſome other Good Orders. But our preſent Miſery makes us Dread the Remedy may not be Strong enough for the Inveterat Diſeaſe, and your Juſtice, and Mercy, give us Confidence to Apply to you, as our Natural Guardians and Good Patrons, for yet further Rectifications, if poſſible from your own Power, by Acts of *Sederunt*; and by your Recommendation, from the Queen in Parliament, who will certainly Statute what your Lordſhips propoſe for the Relief of her Subjects, that the Bleſſing of them who are ready to Periſh may come upon Her: And as Her Arms make Her the Terrour of Oppreſſors Abroad, ſo Her Laws may Save from Oppreſſion and Miſery at Home.

We therefore, with all Humility, beg your Lordſhips may lay our Caſe to Heart, and one way or other Deliver us from our Miſerys, by Statuting or Propoſing Effectual Regulations for our Relief. We beg your Lordſhips would Recommend to ſome Others of Capacity, who may not be under ſuch a heavy Load of Buſineſs; That your Lordſhips would Encourage any Perſon to propoſe Schems; And laſtly, That your Lordſhips would imploy ſome Hours in the Vacance, or appoint a Committee in Seſſion time, to Deviſe what may be Uſeful for ſo Good an End: And then affix Copies in the Parliament Houſe, that Knowing Men of Meaner Ranks in that Illuſtrious Body, of which you are the Head, may have Occaſion to Suggeſt their Sentiments to your Lordſhips, before you paſs or propoſe them for Acts, leſt as ſometimes has happened, the Malice of Men make the Cure worſe than the Diſeaſe.

And Laſtly, We beg your Lordſhips will take in good Part the few Regulations which our weak Judgements could fall on; And that you would Examine them with the Reaſons, which we Humbly Submit to your Lordſhips more Elevated Judgements.

Long may you Live in Honour and Proſperity, to do Juſtice to All, and Reſcue the Oppreſſed from Him that is too Mighty for Him, may you leave your Eſtates to your Children after you, and a Memory that may become your Aſhes.

Some

SOME FEW

OVERTURES,

Humbly preſented to the Lords of Seſſion, *by the Creditors on* Bankrupt Eſtates, *and with all Submiſſion Recommended to their Conſideration, as fit to be Turn'd into* Acts of Sederunt, *or preſented to the Parliament for their Sanction.*

1*mo.* THAT from and after the Day a Perſon becomes Bankrupt in the Terms of the Act 1696, all Diligence againſt his Eſtate, Perſonal or Real be ſtoped, and all Diligence done thereafter ſhall be held Null and Void, and utterly ineffectual for giving of Preference.

That becauſe it may require a Probation, and ſometime, to aſſertain the Inſolvency, every Perſon who comes to be Incarcerate take Sanctuary, Fly or Abſcond, ſhall be preſumed *pro tempore* Inſolvent and Bankrupt, and ſhall have the ſpace of Twenty Days to purge this Preſumption by payment of the Debt for which he was Incarcerate, Latent or Fugitive. And further, That Leidges may be Aſſertained of the Condition of ſuch Perſons, and may ſtop their Diligence againſt their Eſtate; *Let it be Statute*, That the Perſon on whoſe Diligence he is Incarcerate, Latent or Fugitive, preſently after

Elapsing of the said Twenty Days, may and should present a Bill to the Lords of Session, representing the Matter of Fact, and Craving he be declared Bankrupt, unless upon a Day not within other Two Months, nor more than Three, to be appointed by the Lords Deliverance, he attend his Creditors at his own House, if Latent or *in fuga*, or in the Jaylors House, if he be in Prison, and there clear to them or the greatest part of them who shall Meet, the Majority being reckoned by their SumsContracted before the signeting of the Caption that he is not Insolvent. And for the more easie and speedy Intimation of the said Warrand and Deliverance, *Be it Ordered*, That the same be insert in short into the Three next Gazettes instead of all Publication, wairning all the Creditors of who is Incarcerate, Latent or *in fuga* (as the Case shall be) to Meet such a Day or Place to inspect his Business, and stop all Diligence against his Estate in the mean time: At which time the Creditors present, if they think it necessary, shall by the Majority appoint one or more Factors, either of their own Number, or others, who by the said signed Nomination, shall have full Power to Sue all Actions, and intromet with all Goods belonging to the Rebel: Sicklike, as if he were Naturally *D*ead, and they Executors Confirmed to him and his Heirs served. And because it may be uncertain, whether a Person who is absent be *in fuga*, or taken up about his Affairs, Be it allowed to the Person who has the Caption, to come to the Dwelling-house of the Rebel, and there in presence of such of the Family as he can find, and of at least Four of the neareſt Neighbours, to take Instrument in the Hands of a Nottar, requiring the Person absent to appear at such a Hour of such a Day, not within Twenty Days, with Certification, he shall be held as Latent, or *in fuga*, if he appear not; So as the Person and Messenger may apprehend him; And if he observe not the *D*ay, another Instrument taken in the same manner shall be sufficient Proof, that he is *in fuga*, to warrand the Lords of Session to give the

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Deliverance, as above, as if the Perſon were Incarcerat, and make the Intimation in the Gazette.

2*do*. If an Act to this purpoſe were paſſed, it might have ſaved one Third of our Debitors Means, which we Lament to have ſeen Squandered in Multitudes of Arreſtments, Forthcoming, prepoſterous Aſſignations, and the Competitions on them, it might have ſaved the Numerous Hornings, Captions, Inhibitions, Adjudications, and prepoſterous Infeſtments of Annualrents, and all the horrible Competitions, and Intricate and Vexatious Debts upon them, which by our ſad Experience we know to be Ruining, and therefore would prevent others falling into the like Gulph.

Our Law, has already made all Voluntar Deeds done by Bankrupts null and void, and thereby has taken off a great part of voluntary Preferences, which uſed to be extremely Vexatious: Were it not as fit to remove all Preferences by Diligence againſt Bankrupts, that ſo the Weak, Ignorant and Friendleſs may come to their Shares, as well as the Knowing and Powerful, who too often Over-run their Neighbours, and by ways of their own get the Start, ſince Law is deſigned eſpecially to Defend the Friendleſs.

Our Law, has brought in Adjudications within Year and Day *pari paſſu*: Were it not as fit to prevent the neceſſity of theſe many Adjudications; and to admit all *Pari paſsu*, who within the Year and Day bring in Claims, and preſent them to the Lords, ſince it's notour, all Adjudications after the firſt paſs of Courſe.

The Civil Law had a Form, That when ever a Perſon Shunned the Law, Abſented or Lurked, any Creditor craved *mitti in poſſeſſionem*, and obtained it: By which, without any Advantage to himſelf, he became a Factor accomptable; and if within ſome time after no Body appeared to Defend and Anſwer for the *D*ebitor, nor he himſelf; the Creditor Factor, was impowered to Sell the Debitors Lands and Goods at a Roup for the behoof of himſelf, and the remanent Credi-

tors, ſo far as the Price would go: This was a very Compendious Form, the firſt part whereof is ſufficiently contained in the former Overture.

The form of Intimation by the Gazettee, will be more Univerſal than any yet fallen on, and is ſucceſsfully practiſed in *England*.

The Inſtruments to be taken at the Rebels Dwelling-houſe, requiring him to appear, and declaring him not to have appeared, will prevent all the Uncertainty of Latency, better than Probations *ex poſt facto* can do; And there being Four Neighbours beſide the Family, and if the Lords pleaſe, the Magiſtrats within the Burgh, whoſe Concurrance is ſought, it may be very eaſily known to the Perſon, that he may write or come Home.

This Form may ſeem too Eaſie to many, and likely to Multiply Bankrupts, but on the contrary, a Man is made by our Law a Rebel, by a Naked Denunciation, which Forfeits his Movels inſtantly to the Crown, and within a year his Liferent Eſcheat to the Superior, which both of them Ruin Debitor, and Benefit not the Creditor, but through the Lenity of the Prince; Nay, for ordinary break them, if a Subject be Superior. Whereas in this Form, the Debitor is allowed longer time to ſet his Affairs in order, and the Creditors are yet ſooner brought to underſtand his State, and have power to prevent their own Dammage, and yet the Word *Rebel* ſounds as ill as *Bankrupt*.

The Penalty is not great, he having two Months time to return and draw a Scheme of his Affairs to be preſented to his Creditors, who, if there be no Ground to doubt his Solvency, will proceed no further, and if there be, the following Overture is good for all Parties, both Debitor and Creditors.

2*do*. Be it further *Enacted, Statute and Ordain'd*, That the Eſtates of all Bankrupts that are already, or may for hereafter happen to be under Sequeſtration, and to which Factors are or ſhall be named by the Lords of Seſſion, or by the Creditors

ditors among themſelves, as by the preceeding Overture, ſhall be ſold within a certain Space, not exceeding a Year after the Appointing and Acceptance of the ſaid Factors; And where Factors are already named, within the like ſpace after the Date of this Act. And for that effect the ſaid Factors are hereby ordered to make Enquiry, and take Trial for all the Means of the Bankrupt, and their Value, and ſometime within Six Months after their entering upon the ſaid Office, to Compear before the Lords of Seſſion, and upon a Bill to the Ordinary on the Bills for that Week to that effect, get a Day appointed for making an Inventary, to which the Creditors and all others are to be Advertiſed to come the ſaid Day, not being leſs than Twenty Days after, nor more than a Month; At which Diet, the Factor or Factors, ſhall upon Oath give up a true Inventar of all the Bankrupts Means and Eſtate, with the true Value of every Part, to the beſt of their Knowledge, after Enquiry, as ſaid is; And this to ſerve in lieu of all Probation of the Rental: And at the ſame time, or at fartheſt, within 20 *Days* after the ſaid Lord ſhall appoint by the Advice of the Majority of the Creditors, who ſhall be preſent at the making of the ſaid Inventary, and putting a Value upon the ſaid Effects and Eſtate, a Place within *Edinburgh*, whether all the Writs and Evidents of the ſaid Eſtate with formal Inventars ſhall be brought and keeped Patent unto all, untill the time of the Sale: And alſo appoint a Day and Place for the ſaid Roup and Sale, either by whole Sale, or in Parcels, as the Majority of Creditors ſhall pleaſe, and think moſt proper; The firſt offer being made of the Subjects a Tenth part lower than the value given up by the ſaid Factors upon Oath, for the Encouragement of Bidders; And the ſaid Lord, by advice foreſaid, ſhall appoint the ſaid Day of Roup and Sale to be within a ſpace, not leſs than Three Moneths, nor more than 5, and the ſaid Factor ſhall by his Warrand, Intimat to all and ſundry in general to the Bankrupt and Creditors

tors ſpecially in at leaſt 3 Gazettes of each Moneth from the ſaid Appointment till the Day of Sale, by a Note nameing the Lands in ſhort, the Shire where they ly, the Sum of the Values put upon them by the Factor, and whether to be Rouped by whole Sale, or in Parcels, the Day and Place of the Roup, and where the Writs are to be found. At which *Day* the ſaid Lord Ordinary to the Sale, ſhall attend the Roup with a Clerk of Seſſion, from the Hours of 3 to 5, and the higheſt Bidder ſhall the next *Day* after by his Sentence be Decerned Purchaſſer and Proprietar upon Payment or Caution for the Price, which Decreet ſhall be to him a ſufficient Warrand for Charging, Superious paſſing *Signatures*, and doing every thing, that an Heir, Serv'd and Retour'd or Adjudger might do, and ſhall give immediat acceſs to the Mails and Duties, and other conſequences of Poſſeſſion: And that this Form may be inviolably Obſerved, Be it further *Statute*, that any Factor failling in not obſerving the ſame, ſhall have neither Action nor Retention for any part of his Expences, but ſhall *brevi manu* upon a Bill be removed from the Office, and be lyable to all Perſons in their Damadges through his neglect.

And be it further *Statute* and *Ordain'd*, in caſe of Payment of the whole, or any part of the Price to the Factor, that the ſaid Creditors compearing, or who ſhall have given in their Claims before the ſaid Sale, ſhall have Power to borrow up parts of the ſaid price upon Bonds, bearing Annualrent with Caution ſufficient, from the ſaid Factor, effeiring to their Claims at a groſs gueſs, without regard to their Preferences, that may be undiſcuſſed.

The uſefulneſs of ſuch a *Law* would be very great, and would ſave us and others in time coming, the inconveniency of waiting 20 or 30 Years, before we can touch a Farthing of our Money, the vaſt Loſs by Eſtates being long under Factors, and a Thouſand other Diſeaſes.

Our Law allows any Creditor, having a real Right to proſecute the Sale, but commonly they neglect it; Becauſe ſuch

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as are preferable think they need not be at pains, being ſure of their Money, Theſe who are poſterior diſheartned through fear of Looſing, many are taken off by the Factors, or perſwaded by the Bankrupt and his Friends, who through miſtake think it good to delay the Sale, ſo force the Creditors to eaſy Compoſitions, ſo that very few will undertake the great Fatigue, Hazard and Expences of ſuch a Proceſs that will be as uſeful to the reſt of the Creditors, as themſelves: Were it not therefore fit to oblige the Factor, who has the Money in his hands, to do what is very much for the Intereſt of all Perſons, both the Bankrupt and the Creditors: And the Judges who would be thereby eaſ'd of a very great and long laſting Trouble. It's evident in many Eſtates, which at firſt would more than have payed the Debts, and ſo left a Reverſion to the Debitors, beſide Friendly Condeſcenſions of Creditors for ready Payment, that through length of time and many Vexations, the Debitor has got nothing, and the Creditors but very little: Whereas in the Eſtate of *Balnamoon*, Baillie *Roberſon* and ſome others, where the Bankrupts were ſo prudent as to conveen their Creditors and Sell the *de preſenti*, the Creditors were better payed, and the *D*ebitors in both were allowed conſiderable Reverſions.

For the manner of proving the Rental, the Factor is a Perſon choſen by the Creditors, and therefore may be ſuppoſed free of any deſign to cheat them: But further he is upon Oath, and therefore as ready to give up a true Accompt, as the vaſt numbers of Tennents, who are cited in to give their Oaths as to the value, who often claſh and breed ſuch confuſion, that it is ſcarce poſſible to know from them the true woorth; And who are ſo ignorant or malicious, that ſometimes, as in the Eſtate of *Langtoun*, the Rental has been proven twice, as much the one year as it was another; And after all it is not their proofs, Oaths, or a Rental that makes the Price, but the higheſt offer at the Roup: So that all the Vex-

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ations in a nice proving it, is to no purpose, but to encourage Delays.

For the making the Lords price a Tenth part below the Truth, Law has done the like in other Cases: It allows in special Adjudications a 5th part more with a 5 Years Reversion; Here it is but a 10th part more without Reversion. But next the Roup giving so easy and unquestionable a Title, it's like to encourage Purchassers to bid, and when once they come to a Competition, there is no fear that they stay below the true Price, so that were it not for fear of gross Collusions, as in our old Appryssings, there were no great hazard in allowing the Offerers to make any Price they pleased for the first offer, and let the Creditors, and the Bankrupts Friends take care that nothing be sold much below the value: For no Rule under the Sun, can prevent Buying and Selling, somewhat below the just value, where bidders are scarce.

But further such a small Advantage, as a Tenth part in the Price offered below the true Price, is better for all Parties, than to Rack the Rental and Value, because when it is bought to the highest, that no body will purchase, it lands in a very long and unextricable Division of the Lands among the Creditors, that is but the Mother of a multitude of new and vexatious Pleas; and continues the Management by Factors, to the Ruin of the Creditors Debitors: Of which the Estate of *Langtoun*, is but too visible an instance, in which the Rental was once proven above 60000 *Merks per Annum*, another time 36000 *Merks*, And yet has been these Dozen of Years since farmed at 24000 *Merks*, that considering many Deductions yearly, never turns to Accompt of 20000 *Merks*, and though Adjudications be many years ago, by expiring of Legals, became Irredeemable Securities, yet there is no probability, that in the present Form, there will ever come a Division.

The times are Arbitrary, and yet as they are stated, there is no very great hardship in Statuting them; And if, because of Emergents, any latitude may possibly be necessary; There

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may be added to the Statute, a Clauſe Impowering the Lords, to prorogue them ſo much longer, if need ſo require.

There is no Clauſe requiring a Probation of inſolvency added to the Overture, becauſe it ſeems inevitable, that if any Perſon be not able to ſatisfy his Creditors at firſt, or at ſome of the ſubſequent occaſions of their Meeting, that he is ſolvent and able to do their Buſineſs, he will be a great Gainer by a ſpeedy Sale of his Eſtate, which will give him a much more conſiderable Reverſion than can be exſpected, when much is ſpent in a deludge of Diligences and on tedious Proceſſes.

The Intimations ſeem very ſufficient and very diſtinct, and yet of ſmall coaſt, ſince for a Crown or two, all of them, from beginning to end, may be made, by way of Gazette, more univerſally, than ten times as much would do in the preſent Form.

The Method of always taking the Creditors, who ſhall be preſent, to Repreſent the whole, ſeems very agreeable to reaſon, ſince all may be preſent, and the Matter being but Proviſional, ſuch as are abſent, could not in *dubio* be ſuppoſed to entruſt their Concerns as Creditors, better than in the hands of other Creditors, who upon their own particular Intereſts are very lickly to take the ſame to heart, and do prudently in the Affairs of the Creditors in general.

It ſeems very likely, that an Act to this purpoſe, might ſave the vaſt loſs we and our Succeſſors in Sufferings, may be at, through long depending of our Debates, and through long continued Sequeſtrations, that Eat out ſo much of our Fonds for Payment.

The preſent Form of allowing Purchaſſers to conſign in the hands of the Town of *Edinburgh*, has been hitherto of very ſmall loſs, there being but few Examples of Conſignations of any conſiderable Sums, but becauſe its fit to obviat Inconveniences, it ſeems prudent enough to Impower the Factor to lend Sums ſo Conſigned, and particularly to the Creditors Intereſted, whoſe Intereſts are in a good part their Caution, and

yet its fit to burden them with other Caution, leſt they may borrow more than may fall to them, and it being one ſufficient Security, there can in all probability be but ſmall hazard to the reſt; And at the ſame time, there is no loſs on the Money, which effectually bears Annualrent, and is uſeful in the mean time to the Perſons, whoſe at the bottom it is, and to whom in the event it will belong.

3*tio*. Be it *Statute* and *Ordain'd*, That all Proceſſes of Rankings and Compt and Reckonings, which are parts of, or in order to Rankings, or in their own nature Vexations, as conſiſting of a Number of Articles of diſtinct natures, already depending, or which may happen for the futur to depend before the Lords of Seſſion, ſhall upon a Bill by any of the Parties Purſuer or Defender, be Remitted, if in *re Mercatoria* to two Merchants, if in other Matters to two Writers or Advocats, one to be named by each Party, and the Lords to name a Third, and in caſe any Party refuſe or delay to name, the Lords to name for him, the which Three Perſons, or any two of them, the Third being always advertiſed of the Dyet of Meeting, are hereby Impowered to name their own Clerk, and to call for all Papers, Examining Witneſſes, Cognoſce on, and Determine all ſuch Rankings, and Compt and Reckonings; Sicklike, as if all the Parties concerned had given under their hands a Subſcrived Submiſſion, excepting only, that if any Perſon thinks himſelf Leiſed in any point, and after one Application does not get Redreſs, the ſaid Perſon may apply, by way of Bill, to the Lords of Seſſion, for their Deciſion, which nevertheleſs ſhall not hinder the ſaid delegate Judges, to proceed and determine in all other points: And further, the ſaid Judges delegat are hereby Impowered in caſe of Difficulty occurring to them, of their own accord, to apply ſummarly by way of Bill, to the Lords of Seſſion, for their determination in that doubtful Point, without ſtoping their Procedure and Cognition, as to any other Points that may be in the ſaids Cauſes.

And

And further be it *Statute* and *Ordain'd*, That where ever a Factor or Factors are named by the Creditors, or by the Lords to any Bankrupt Eſtate in time coming, or where the Eſtates are already under Sequeſtration; The ſaid Factor or Factors Appointed, or to be Appointed, ſhall be bound and obliged within the ſpace of Three Months, from and after the date of this Act, or their Appointment, to Raiſe and Execute a Reduction, Improbation and Declarator in their own Names, as Repreſenting the Collective Body of Creditors, and the Bankrupt againſt each of the Creditors, or any Perſon whom he ſuſpects to be Creditors, calling them to produce all Writes and Securities they have upon ſuch Lands, and all Bonds, Aſſignations, or other Grounds and Conveyances of Debts due by the ſaid Bankrupt Perſons; And further ſhall inſert a ſhort Copy of the ſaid Summonds, nameing the Perſon and the Lands, and Summonding all the Creditors to appear, bringing with them their Grounds of Debt on a prefixed day for the ſecond Dyet, into 3 Gazettes next ſubſequent to the ſaid Citations, at leaſt allowing as many free days, as *Law* requires, after the firſt inſerting into the Gazette, and the Term of Compearance for the ſecond Dyet; At which *Dyet* the ſaid Factor ſhall inſiſt, and cauſe a firſt Term to be taken, & after that a Second; At which Certification *contra non producta* ſhall be granted, and inſtead of *Aviſandum* with the Writs produced, the whole Competitions and Ranking of the Creditors ſhall be remitted to Three Advocats or Writers, Two to be Named by the Majority of Creditors, who ſhall have produced their Intereſts, and the Third by the Lord who grants Certification, the which Three Judges delegate ſhall have Power as above to Cognoſce and *D*etermine.

And further be it *Statute* and *Ordain'd*, That the ſaid Judges delegate and their Clerk upon finiſhing their Decreets, ſhall have ſuch Fees allowed them for their Pains, as the Lords of Seſſion upon a Bill preſented to them, and Anſwers by the Creditors upon Conſideration of the Sums Ranked, Fond of

Payments, number of Intereſts, and length of Procedure, ſhall think juſt, and this their Decreet Regiſtrate in the Books of Seſſion, to have the effect of a Decreet *in foro*, providing, that before it be Regiſtrate, the ſame ly in the hands of the Clerk of Seſſion; That any Perſon who thinks himſelf Leiſed may Bill to the Lords as *lite pendente*, for redreſs and amendment of any Interloquitor, dureing the ſpace of a Month: And it is further Statute, That no Perſon ſhall be obliged to Extract the whole Decreet, but allenarly the laſt Bills, Minuts, and Sentances thereon, relating to their particular Caſe or Caſes, for which they ſhall pay to the Clerks, the Sum of Three *pounds Scots* allenarly, beſide 20 *ſhilling* for ilk ſheet it ſhall take up, and the ſaid Factor a Copy for the whole Creditors at the rate of 20 *ſhil. Scots per ſheet*, and the original Signed by the Judges Delegate, and the Lords allowance and Authority ſubjoined thereto, to ly in the Records of Seſſion, and that all Parties may be obliged to do their Duty, the ſaid Factor failzieing to be deprived and loſs his former Fees, and the ſaid Judges to be deprived, and looſe the hopes of their Sallary, and others to be ſubſtitute in their places, by the Lords of Seſſion, upon Complaint of any of the Creditors, or the ſaid Factor, of their delay of Juſtice, and their Anſwers thereto.

The firſt effect of ſuch a Law would be great eaſe to the Lords of Seſſion, whoſe Lodgings are (as it were) haunſed Night and Day, with ſheals of contending Creditors in theſe Proceſſes, ſo full of Laborious Work in Reading and comparing many and long Papers, caſting up and adjuſting tedious Accompts, with heaps of petty Queſtions that are endleſs, while the matter is managed *in ſtrepitu judicii*.

The ſecond Effect would be great diſpatch to the Leidges in having Judges, who might allow them whole Afternoons, or Forenoons, to clear theſe Points in, which take up whole Seſſions before the Lords, from whom they cannot expect above half an Hours Hearing in a Week, and ſometimes not near ſo much; All which time is ſpent before they come to the

Point

Point in hand, which is more troubleſome, for the moſt part, to find out, than to decide, and in tedious rehearſals, and different accounts of what is already done.

The Leidges would be at no loſs in paying the Gratification to the Judges Delegate, ſince they would have pay'd Ten times alſe much to other Advocats for their Aſſiſtance in Pleading and Manageing their Cauſes.

The Neceſſity of ſuch a Law is but too great, there never having been yet a Ranking of Creditors in any Eſtate fully compleated before the Seſſion, except that of *Nicolſon*; and even in that, there was a Conſert of Creditors, whoſe Doers prepared Things for the Lords.

That it is practicable theſe two Inſtances evince from the *Roman* Law, which in Actions *pro ſocio*, and the like, that Landed in Compt and Reckonings, did not give *Judicem*, but *Arbitrum*, who at more Liberty adjuſted Things, and in time of the Uſurpers, whoſe good Things we ſhould not ſhame to Imitate the Commiſſioners for Adminiſtration of Juſtice, always remitted ſuch vexatious Proceſſes, if among Merchants to Two Merchants, if about Writers or the like, to Men of Law. In which time there was a vaſt dale more Diſpatch, as we are informed, than ever has been ſince.

A main Objection againſt this Project is, That it will be a great Loſs to the Parliament Houſe in its Members, Advocats, Clerks, and Writers to the Signet. But if better look'd too, it will not be of ſo very ill conſequence. Since in theſe ſort of Cauſes Advocates get long and Vexatious Work for little or no Payments, whereas in this Form, they might expect, and the Parties be able to pay, more handſome Gratifications for their Aſſiduous Aſſiſtance one Seſſion, than for their now and then Compearances in four Seſſions. And for the Clerks, they loſe not all, having ſo much allowed them at Extracting Decreets, and Dollars for every Bill given in againſt Interlocutors of the Judges Delegates: And then they are delivered from the daily Vexation of theſe frequent Callings and Hearings at Lords Lodgings, and the hourly attendance they require

quire, which yet but seldom turn much to their Account, since very seldom are Decreets of Ranking or Compt and Reckonings Extracted, but for the most part when Parties are outwearied with Expence, Attendance, and Delays, they end their Business by Transaction in the Country. But further, This would by making Justice and Dispatch more Easie, Encourage many to come to seek it, who at present are forced through Poverty to sit with the Wrong, especially if their Adversary be a Person of Weight and Influence, which would unquestionably make Processes more frequent, and in a great Measure cure the Complaint, that there is little Business at the Session. What wonder is it there is little Business there, when there is so little dispatch of Business there? and the Clerks would find as well as the Merchants, that light Profits make a heavy Purse, by increasing Customers. All which would be also true as to Advocats, who would be as well considered for their Assistance and Counsel at one peremptor Diet, as it is in the Justiciary and Exchequer, as for Vexation before the Session, where things are so hardly brought to a Period, and Services are little considered, because not Final and Concluding. But upon the whole (tho' as is above, it be likly rather to Advantage, than Prejudge the Colledge of Justice) it would look very ill in any to prefer so much their own private Interests to that of the Nation, as to leave the whole Country Groaning under Oppression, for a small gain to themselves. And it would be a great Violation of their Oaths *de fideli*, to set up for retarding of Justice, which is really the heavyest of Unjustice, when they have sworn Faithfully to serve their Clients, by promoting and dispatching Justice.

My Lords, as these three Overtures, with our most Humble Prayers are presented to you, so we dare not say that we have hit exactly on the best Remedys; But by all our distresses we Obtest your Lordships to think on some such or better Remidys; and if you do not think them altogether in the wrong, to propale them or better, that People less throng'd than your Lordships, may suggest their Thoughts.

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